

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HUNG PHUOC NGUYEN,

Petitioner,

No. 02-cv2758 LKK JFM (HC)

vs.

MIKE KNOWLES,

Respondent.

ORDER

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Petitioner, a state prisoner proceeding through counsel, has timely filed a notice of appeal of this court's order granting in part and denying in part his application for a writ of habeas corpus together with a motion for a certificate of appealability pursuant to 28 U.S.C. § 2253(c).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate of appealability must "indicate which specific issue or issues satisfy" the requirement. 28 U.S.C. § 2253(c)(3).

A certificate of appealability should be granted for any issue that petitioner can demonstrate is "debateable among jurists of reason," could be resolved differently by a different

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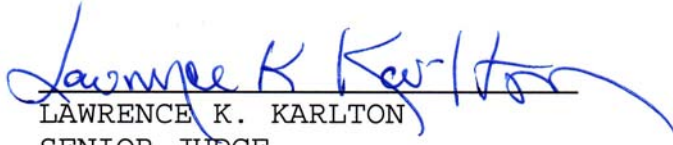
1 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
2 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

3 In his motion, petitioner has made a substantial showing of the denial of a
4 constitutional right in the following issue: whether petitioner’s rights to due process and to
5 counsel were violated when petitioner was absent from an in camera hearing between the court
6 and his trial counsel and, if so, whether the error is structural or, in the alternative, whether the
7 error prejudiced petitioner at trial.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Petitioner’s October 18, 2010 motion for a certificate of appealability is
10 granted;
11 2. A certificate of appealability is issued in the present action; and
12 3. The Clerk of the Court is directed to process petitioner’s appeal to the United
13 States Court of Appeals for the Ninth Circuit.

14 DATED: October 22, 2010.

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17 LAWRENCE K. KARLTON
18 SENIOR JUDGE
19 UNITED STATES DISTRICT COURT
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25 ¹ Except for the requirement that appealable issues be specifically identified, the standard
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of
a certificate of probable cause. Jennings, at 1010.